IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

OP.No. 35126 of 2002(F)

PETITIONER:

A.C.DEVASSY, ARAKKAL HOUSE,
KECHERI P.O., TALAPPILLY TALUK, THRISSUR DISTRICT

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:
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1. **THE TAHSILDAR, TALAPPILLY TALUK,**
   THRISSUR DISTRICT

2. **THE REVENUE DIVISIONAL OFFICER,**
   THRISSUR.

3. **THE DISTRICT COLLECTOR, THRISSUR.**

4. **THE GOVERNMENT OF KERALA,**
   REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE, SECRETARIATE, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/01 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.59426/2002 IN OP. 35126/2002

DISMISSED

12.1.2007 **SD/- K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER OF THE 1ST RESPONDENT.

EXT.P2:- COPY OF THE LIST OF DOCUMENTS FILED BEFORE THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE ORDER OF THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE ORDER OF THE 3RD RESPONDENT.

EXT.P5:- COPY OF THE JUDGMENT OF KERALA HIGH COURT.

EXT.P6:- COPY OF THE LEASE DEED ENTERED INTO WITH THE INDIAN OVERSEAS BANK.

EXT.P7:- COPY OF THE CERTIFICATE ISSUED BY THE INDIAN OVERSEAS BANK

EXT.P8:- COPY OF THE ORDER OF THE 3RD RESPONDENT.

EXT.P9:- COPY OF THE RECEIPT ISSUED BY THE PANCHAYATH EXECUTIVE OFFICER, CHOONDAL.

EXT.P10:- COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY, CHOONDAL GRAMA PANCHAYATH.

/TRUE COPY/

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K.BALAKRISHNAN NAIR, J.

O.P.NO.35126 of 2002-F

Dated this the 12th day of January, 2007

JUDGMENT

The petitioner submits he constructed a commercial building in Sy.No.515 of Eranallur Village in Thalappilly Taluk, in 1971, long before the enforcement of the Kerala Building Tax Ordinance with effect from 1-4-1973. He has given the building on lease as per Ext.P6 lease deed dated 15-6-1973. Long thereafter, in 1999 the petitioner has been served with Ext.P1 order assessing the said building to tax, under the Kerala Building Tax Act 1975. As per Ext.P1, it was found that the petitioner constructed a building on 14-5-1973 or thereafter and therefore he is liable to pay tax to the tune of Rs. 19,800/-. He filed an appeal before the R.D.O. That appeal was dismissed by Ext.P3. He filed revision before the District Collector. The revision was dismissed by Ext.P4. He challenged the above-said orders before this Court. This Court remitted the matter to the R.D.O. for fresh consideration. The R.D.O. again held against the petitioner and rejected his contentions by order dated 28-5-2000. The petitioner filed revision before the District Collector. That revision

was dismissed by Ext.P8 order dated 26-7-2002. This original petition is filed challenging Ext.P8.

2. According to the petitioner, the finding of the authorities regarding the date of construction is unsustainable. Apart from Ext.P6 lease deed he also relies on Exts.P9 receipt issued by the Panchayat levying house tax for the said building for the first half of 1973-74. He also relies on Ext.P7 certificate issued by the Indian Overseas Bank to show that the petitioner's building was in its possession from 15-6-1973 to 9-2-1987. Based on the above documents the petitioner would submit the building was actually constructed before 1-4-1973. Altogether he would submit that the omission of the Tahsildar to levy the tax within a reasonable time is unjustified. Even though there is no express bar or limitation in the Act, the respondents were bound to collect tax within a reasonable time limit. Its collection after a lapse of several years, in 1999, is unjustified. In support of that submission reliance is placed on the decision of the Apex Court in Government of India Vs. Citedal Fine Pharmaceuticals (1989 (3) SCC 483).

2. The respondents have filed counter affidavit supporting

the impugned orders.

3. Heard the learned counsel on both sides. The finding that the building was constructed after 1-4-1973 is a finding of fact which cannot be disturbed by this Court. It shows that it is not perverse. Ext.P6 would show that the petitioner has given the building on lease, to the Indian Overseas Bank in June, 1973. It would not show that the building was constructed before 1-4-1973. Going by Ext.P8, the impugned order, it could be seen that only Ext.P6 was the material which was produced before the R.D.O. and District Collector. Therefore, this Court need not go into the contention raised by the petitioner relying on Exts.P7 and P9. Ext.P7 would only show that the Indian Overseas Bank was a tenant in the petitioner's building from June, 1973. Ext.P9 also would show that the petitioner has paid property tax which is described in the receipt as house tax in the first half of 1973-74. It does not show that the said receipt relates to a particular period. It was not a material produced before the authorities below. Further, even if the construction is completed in May, 1973 the property tax (house tax) will be collected from 1-4-1973. Therefore, it is not a clinching material in favour of the petitioner.

In the result, I find that the finding of the authorities below that the building was constructed after 1-4-1973 cannot be said to be perverse warranting interference by this Court.

4. The next contention of the petitioner is that after the lapse of several years there cannot be any levy and collection of building tax. Under the Building Tax Act, there is no period of limitation fixed. Under Sec.7, the petitioner is bound to file the returns. As per Sec.7 (3) and the relevant rules, the Village Officer has to keep the register of new buildings and he has to bring it to the notice of the Tahsildar so that the Tahsildar can ask the person who constructed the building to file returns under Sec.7 of the Building Tax Act. But, their failure in this regard cannot create any right in favour of the petitioner. The decision relied on by the petitioner relates to demand of short levy or deficiency in collection of tax. It does not relate to collection at the first instance. The petitioner cannot take advantage of his own default. So, the jurisdiction under Art.226 of the Constitution of India being discretionary, I feel that this Court cannot extend its helping hand to the petitioner who flouted by not filing the returns and who is now trying to take advantage of his own

default. So, the technical contention raised by the petitioner based on delay cannot be accepted.

The Original Petition fails, and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE.

MS

K.BALAKRISHNAN NAIR, J.

O.P. No.35126 of 2002

J U D G M E N T

DATED 12th JANUARY,2007